



October 31, 2005

Mr. Bill Sain
OUSD (AT&L) DPAP (DAR)
IMD 3C132
3062 Defense Pentagon
Washington, DC 20301-3062

Subject: Defense Federal Acquisition Regulation Supplement; Levy on Payments to Contractors

Reference: DFARS Case 2004-D033, 70 F.R. 52031
Federal Register Date – September 1, 2005

Dear Mr. Sain:

The Aerospace Industries Association appreciates the opportunity to provide comments on the interim rule issued on September 1, 2005, under the heading DFARS Case 2004-D033, Defense Federal Acquisition Regulation Supplement; Levy on Payments to Contractors.

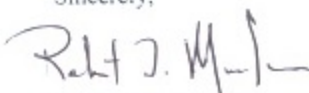
We agree that interim changes to the DFARS will be helpful in allowing contractors to notify contracting officers that offsets related to Internal Revenue Service levies will jeopardize performance of an affected contract or contracts and will adversely affect national security or result in significant additional costs to the Government. However, there are some statements in the Background Section (Section A) and the Paperwork Reduction Act (Section C) of the Federal Register issuance that should be changed to make them consistent with DoD Policy and Procedure 232.7001 of the DFARS Procedures, Guidance, and Information. We believe the changes are necessary, notwithstanding the clarity of the DFARS, to avoid potential confusion over whether contractors are required to notify contracting officers when levies not affecting contract performance and national security are imposed, and to justify DoD's Paperwork Reduction Act estimate that the "number of contractors affected is less than 10." The changes that we believe should be incorporated in the Sections A and C in finalizing this interim rule are shown in Attachment.

This letter may not be the medium to raise this issue, but we believe that the Department of Defense should initiate actions to draft a proposed regulation that will require all Federal agencies to provide notice by email for all potential offsets at least thirty (30) days in advance of the target offset date to the following contractor points of contact established by the Central

Contract Registration (CCR) system: the CCR Point of Contact, the Contracts Point of Contact, and the Accounts Receivable Point of Contact. For a number of years, Federal Agencies, the Internal Revenue Service in particular, have not complied with the intent and spirit of Debt Collection Improvement Act of 1996 in making offsets to recover levies related to contract overpayments and tax underpayments. Among the purposes of the Act are the following, cited in Chapter 10, paragraph (b) ... "(4) To ensure that the public is fully informed of the Federal Government's debt collection policies and debtors are cognizant of their financial obligations to repay amounts owed to the Federal Government, and (5) to ensure that debtors have all due process rights, including the ability to verify, challenge and compromise claims, and access to administrative appeals procedures...." The process by which offsets are currently being effected does not assure that contractors are fully cognizant of their obligations to repay amounts owed to the Federal Government, and that contractors have the ability to verify, challenge and appeal the debt claims the offsets are intended to recover. Our member companies firmly believe the current offset process could be greatly improved and we would be glad to meet with any representatives of the Federal Government to discuss our recommendation and provide examples of offsets taken that failed to meet the intent of the Debt Collection Improvement Act.

If you have any questions concerning any of the above comments on the interim rule, please contact Mr. Dick Powers of my staff on 703 358-1042. He can be reached by email at dick.powers@aia-aerospace.org.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert T. Marlow", with a stylized flourish at the end.

Robert T. Marlow
Vice President, Acquisition Policy

Attachment

ATTACHMENT

A. Background

Levies That Jeopardize Contract Performance

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The levy process makes it impractical, in most cases, to identify whether a levy will jeopardize contract performance prior to a contract payment being levied. While the contractor may have received a notice of potential levy, that notice does not identify which contract or contracts to which the levy will be applied. Furthermore, it is the contractor's responsibility for identifying a levy that will significantly impact contract performance, since it is the contractor's liability that has created the situation. Therefore, this interim rule requires that the contractor notify the contracting officer when the contractor believes a levy, imposed on a DoD contract payment, will jeopardize contract performance. In addition, the contractor is required to advise the contracting officer if the contractor is aware of any adverse effect on national security that may result from the inability to perform the contract. The contracting officer will take appropriate action on the instant contract.

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C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq. Although the rule requires contractors to provide certain information to the Government when levies jeopardizing contract performance and adversely affecting national security are imposed on DoD contract payments, the number of contractors that will be subject to this requirement is expected to be less than 10 per year.

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